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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, A. D. 1942

WILLIAM L. MURRAY, as Agent for and on Behalf of JAMES REDDICK, and Others Similarly Situated, *Petitioner*, vs. NOBLESVILLE MILLING COMPANY, a Corporation, *Respondent.*	No. .....

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

TO THE HONORABLE, THE SUPREME COURT OF THE UNITED STATES:

The petitioner, William L. Murray, as agent for and on behalf of James Reddick and others similarly situated, respectfully shows to the Court:

SUMMARY STATEMENT OF MATTERS INVOLVED

The petitioner's complaint (R. 2-6), filed March 10, 1941, in the Circuit Court, Hamilton County, State of Indiana,

under Section 16 (b) of the Fair Labor Standards Act of 1938, alleged that the petitioner was the duly authorized agent of the employees named in the complaint, that the respondent had employed said employees in the production of goods for commerce and owed them unpaid overtime compensation, plus equal amounts as liquidated damages and reasonable attorney's fees and costs. The respondent, having removed the case to the United States District Court for the Southern District of Indiana (R. 1), filed its answer denying violations of the Act (R. 7-11).

The District Court found that the respondent's arrangement of October 18, 1938, placed in issue by the complaint and answer, was not a bona fide contract and was considered by respondent as merely a bookkeeping system, that the employees after October 18, 1938, did not know exactly how to figure their pay and considered that it remained unchanged (R. 51), and concluded that the petitioner was entitled to the judgment prayed for (R. 51). The United States Circuit Court of Appeals for the Seventh Circuit, held that the case was governed by *Walling v. Belo Corp.*, 316 U. S. 624, that the employees who were in respondent's employ on October 18, 1938, agreed on that date to a reduction in their rate of pay, and as to those employees together with three others subsequently employed, reversed the judgment of the district court, (R. 71-74).

OPINIONS BELOW

The opinion of the District Court (R. 45-51) is reported in 42 Fed. S. 808. The opinion of the Circuit Court of Appeals (R. 67-75) is reported in 131 F. (2d) 470.

JURISDICTION

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as Amended by the Act of

February 13, 1925, C-229 (43 Stat. 938; 28 U. S. C. Sec. 347). The decree of the Circuit Court of Appeals on the merits was entered on November 25, 1942, and this petition for certiorari was filed before the expiration of three (3) months from said date.

QUESTIONS PRESENTED

1. Prior to October 24, 1938, the effective date of the Fair Labor Standards Act, an employer was paying its employees engaged in the production of goods for commerce wages at the rate of 40 cents an hour with a usual workweek of 60 hours. On October 18, 1938, it advised them that when they worked over 40 hours a week, it would calculate their pay on a basis of 34 cents for the first 40 hours a week and 51 cents an hour for the hours in excess of 40, and pay a bonus to bring the total pay up to what they would have received at the rate of 40 cents an hour. The question is whether this arrangement satisfies the requirements of Section 7, of the Fair Labor Standards Act.

2. Does an arrangement such as described under "1" above come within the rule laid down by this Court in *Walling v. Belo Corp.*, 316 U. S. 624?

STATUTES INVOLVED

The relevant provisions of the Fair Labor Standards Act of 1938, are set forth in the appendix.

STATEMENT OF FACTS

Prior to October 24, 1938, the effective date of the Fair Labor Standards Act of 1938, the respondent was engaged in the operation of a flour mill (R. 15) at Noblesville, Indiana. This operation continued until about February 21, 1941, when the plant was sold and operations ceased (R. 32).

The employees here involved, with the exception of five who were employed later (R. 15) and two of whom the Circuit Court of Appeals held were entitled to recover from respondent, were in the employ of respondent during all of the time mentioned herein. It was customary for respondent to work its employees about 60 hours each week (R. 32) and they were paid 40 cents an hour straight time except that some of them received a slightly higher rate (R. 43).

On October 18, 1938, the respondent, in anticipation of the Fair Labor Standards Act (R. 32, 42, 43) called a meeting at which all its employees attended except one, to discuss its future policy concerning said Act (R. 17). Respondent by its secretary-treasurer, Don Jenkins, advised its employees that they would not receive a raise in wages on account thereof (R. 22) but that it had figured out a method whereby the employees could still receive the same amount of money for the same amount of work (R. 18, 23, 27, 32), which plan was, in the case of a 40 cent per hour employee, to reduce the existing rate to 34 cents an hour (R. 18) pay overtime based thereupon at 51 cents an hour and in the event the sum thus received did not equal the total amount the employee had formerly received, to add a "bonus" or "gratuity" sufficient to equalize his hourly rate of pay with that which he had formerly received (R. 32, 33, 34).

In theory this plan applied to all employees except two, who were considered by respondent to be retail salesmen engaged in intrastate commerce, whether they had formerly worked for more or less than 40 cents an hour (R. 27). Respondent in addition to disclosing its plan, told its employees that it would go immediately to 40 hours in calculating the overtime pay, disregarding the 44 and 42 hourly maximum established under Section 7 (a) (1) and (2) of the

Act (R. 32) and that it would in all instances, where the employee worked less than 40 hours in any work week, pay such employee 40 cents an hour (R. 18, 21, 23, 25). Respondent advised them further that under the plan as thus set up, it could work them for 60 hours at 40 cents an hour (R. 23), that it wouldn't make any difference as to the hourly rate of the employees (R. 23), that it wasn't interested in the hourly rate except that it came within the minimum provided for in the Act (R. 38) and that its plan was merely a matter of bookkeeping (R. 32, 43). Respondent instructed the employees to refrain from telling anyone what wages they were receiving, but if anyone should inquire they were told to advise them that their rate of pay was 40 cents an hour and time and one-half for overtime (R. 18, 23, 24).

In concluding the meeting Fred Atkins, grain superintendent of respondent company (R. 20) asked John Williams an employee to rise and give Jenkins a vote of thanks for the trouble he had gone to, Williams refused (R. 18) and thereupon Atkins made a motion for all employees in favor of letting Jenkins take care of it, "stand up," which they did as they wanted to get out and go home (R. 21). The employees never understood the plan advanced by respondent (R. 19, 22, 23) but always considered that they continued to receive their old rates of 40 cents an hour (R. 19, 25), and respondent on several occasions thereafter engaged employees and advised them that their hourly rates of pay would be 40 cents an hour (R. 25) although the record of their wages were compiled in the same manner as other employees. (See Exhibit 1, of Stipulation No. 1.)

In substance the plan proposed by the respondent was that the pay of the employees for the hours up to 40 a week should be calculated at the rate of 34 cents an hour, with pay for hours in excess of 40, at 51 cents an hour, and that in addition to the pay so calculated, the employees would

receive a "bonus," so that the total money they received each week would equal 40 cents an hour, which was the rate at which they had been paid before October 18, 1938. The Respondent's plan did not include any guarantee of a weekly minimum amount, but the employee was paid according to the number of hours worked, 40 cents an hour for each hour up to 61 a week.

Thereafter Jenkins made an entry in the weekly time book of respondent with reference to the change in the employees base rate of pay (R. 40) and thereupon revised its bookkeeping system (R. 15) to reflect its new system, a typical example of which is as follows:

1938		Mack Cook	Total Hrs.	Base Hrs.	Rate	Base Total	Over Time Hrs.	Over Time Rate	Over Time Total	Bonus	Total Labor	Old Age	Check
Oct.	21	"	30	30	.34	10.20	....	.51	.....	1.80	12.00	.12	11.88
"	28	"	46	40	"	13.60	6	"	3.06	1.74	18.40	.18	18.22
Nov.	4	"	75	40	"	13.60	35	"	17.85	.....	31.45	.31	31.14
"	11	"	60	40	"	13.60	20	"	10.20	.20	24.00	.24	23.76
"	18	"	60	40	"	13.60	20	"	10.20	.20	24.00	.24	23.76
"	25	"	21	21	"	7.14	....	"	.....	1.26	8.40	.08	8.32
Dec.	2	"	50	40	"	13.60	10	"	5.10	1.30	20.00	.20	19.80
"	9	"	60	40	"	13.60	20	"	10.20	.20	24.00	.24	23.76
"	16	"	40	40	"	13.60	....	"	.....	2.40	16.00	.16	15.84
"	23	"	15	15	"	5.10	....	"	.....	.90	6.00	.06	5.94

(R. 16)

Respondent proceeded to keep its books in the above manner as shown by Exhibit 1, attached to stipulation 1, (R. 16), but furnished its employees each week a social security slip showing only the date of the pay period, the days worked, amount of salary, total earnings, deduction for old age benefits and the net amount paid (R. 19) which in all instances under 61 hours would equal 40 cents an hour (R. 19).

REASONS FOR GRANTING THE WRIT

1. The holding of the Circuit Court of Appeals that for purposes of Section 7 of the Fair Labor Standards Act the "regular rates" of the employees were the rates of 34 cents an hour under the alleged pay arrangement of October

18, 1938, although the employees' actual compensation for hours worked up to 61 a week was 40 cents an hour is probably erroneous under the rule laid down by this Court in *Overnight Motor Co. v. Missel,* 316 U. S. 572, and applied by this Court in *Warren-Bradshaw Co. v. Hall,* 63 Sup. Ct. 125, and *Floyd v. DuBois Soap Co.,* 63 Sup. Ct. 159. These cases dealt with the application of Section 7 to employees paid, respectively, a fixed weekly salary for a varying number of hours per week, a fixed daily wage, and a fixed weekly wage for a regular and unvarying number of hours per week. In the *Missel* case this Court held that the words "regular rate at which he is employed" in Section 7 mean the employee's actual hourly rate of earnings, determined for each week by dividing the amount of his wage by the number of hours worked, and that compliance with the Act requires that for each hour in excess of the statutory maximum the employee be compensated at not less than 150 per cent of such "regular rate." The opinion in the *Missel* case also points out the substantial similarity between the employee who is paid by the hour and the employee who is paid a fixed weekly wage for regular contract hours which are the actual hours worked. And see, *Bumpus v. Continental Baking Co.,* (C. C. A. 6), 124 F. (2d) 549; certiorari denied 316 U. S. 704.

The employees concerned in this petition were hourly rate employees, both before and after the alleged "pay arrangement" of October 18, 1938. Up to 61 hours a week the pay they received varied in direct proportion to the number of hours worked. When a typical employee worked 15 hours a week, his pay was $6, 30 hours, $12, and 60 hours, $24 (R. 16) and his per hour rate of earnings was 40 cents an hour, and that rate was "the regular rate at which he was employed." *Overnight Motor Co., v. Missel,* 316 U. S. 572.

These employees had no fixed weekly salaries, paid regardless of the number of hours worked, and no *weekly* amount was guaranteed. In this respect the present case is clearly distinguishable from *Walling v. Belo Corp.*, 316 U. S. 624. The employees in the *Belo* case received weekly guaranties or salaries for any number of hours up to 54½ per week, during the first year, so they were assured a regular weekly income even in weeks when work was slack. The employees in the present case had no such security. The *Belo* case held that the "regular rate" of a weekly paid employee may be fixed by contract at a rate lower than his actual hourly earnings for some weeks, but it did not hold it is submitted, that the "regular rate" of a 40 cent an hour employee may be "fixed" at 34 cents for purposes of Section 7, while the employee is still paid 40 cents for each hour.* Nor were there in the present case, as the lower Court found in the *Belo* case (316 U. S. pp. 629-630) "actual bona fide contracts of employment" which "were intended to, and did, really fix the regular rates at which each employee was employed." In this case the District Court which heard the witness found that the employees considered that their pay remained unchanged after October 18, 1938, and that the respondent considered the arrangement of that date to be merely a bookkeeping system (R. 51). If there was any "contract" on October 18, 1938, it was not a contract to fix the rates of pay at 34 cents an hour, but one to divide the former rate of 40 cents an hour into 34 cents an hour and a "bonus" with no change in the actual per hour compensation of the employee.

2. The decision below is in conflict with the decision of

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* The present case does not involve a real reduction in the rate of pay, such as was found in *White v. Witwer Grocer Co.*, 5 Wage hour Rept. 1007 (Dec. 11, 1942, C. C. A. 8), and *General Mills, Inc. v. Williams*, 6 Wage Hour Rept. 19 (Dec. 16, 1942, C. C. A. 6). In these cases there was no guaranty or other device to continue the former hourly rate.

the Circuit Court of Appeals for the Eighth Circuit in *Carleton Screw Products Co., v. Fleming,* 126 F. (2d) 537, certiorari denied 63 Sup. Ct. 54. That case like the present dealt with hourly paid employees and the facts were strikingly similar to the facts in the present case. The Carleton Screw Products Company in anticipation of the Fair Labor Standards Act likewise purportedly "agreed" with its employees upon hourly rates of pay 10 cents lower than the hourly rates they received before the effective date of the Act, and as part of the arrangement each employee was paid overtime compensation at one and one-half times his new "agreed" rate and a "bonus" sufficient to bring his weekly pay up to the amount he would have received for the same number of hours at his old hourly rate. The Circuit Court of Appeals for the Eighth Circuit held that the "regular rates" of the employees were the hourly rates they were actually paid for each hour and not the "agreed" rates, and that the so-called "bonus" was a part of the employee's regular compensation on which the time and one-half for over-time must be based. The decision of the Eighth Circuit in the *Carleton Screw* case and the decision of the Circuit Court of Appeals in the present case appear to be irreconcilable as to the "regular rate" of an employee who receives a guaranteed hourly rate made up of an agreed hourly rate plus a bonus.

3. The determination of the questions herein presented involve the substantial interests of employee rights to overtime compensation pursuant to the provisions of Section 7, of the Fair Labor Standards Act. At the time of the effective date of the Fair Labor Standards Act, many and devious ways were devised by employers generally throughout the country employing large numbers of employees, for the purpose of avoiding obligations under the Act. The purported scheme of the respondent company was one such

devise in avoidance of such obligation, and the employees herein involved represent only a small group of numerous employees of employers generally, as to whom the obligations of the statute with respect to overtime were thus avoided, and if the opinion of the Circuit Court of Appeals of the Seventh Circuit is allowed to stand it will result in an unequal administration of the law.

CONCLUSION

WHEREFORE, your petitioner prays that a writ of certiorari issue under the seal of this court, directed to the Circuit Court of Appeals for the Seventh Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Circuit Court of Appeals had in the case numbered and entitled on its docket, No. 7996, William L. Murray, as Agent for and on behalf of James Reddick, and others similarly situated, Plaintiff-Appellee vs. Noblesville Milling Company, a Corporation, Defendant-Appellant, to the end that this cause may be reviewed and determined by this Court as provided for by the statutes of the United States; and that the portion of said judgment of said Circuit Court of Appeals, to which this writ is directed, be reversed by the Court, and for such further relief as to this Court may seem proper.

FRANCIS E. THOMASON,
Counsel for Petitioner.

Dated, February 8, 1943.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, A. D. 1942

WILLIAM L. MURRAY, As Agent for and on Behalf of JAMES REDDICK, and Others Similarly Situated, *Petitioner.* vs. NOBLESVILLE MILLING COMPANY, a Corporation, *Respondent.*	No. .....

BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

The opinions in this case are set forth in the petition for Writ of Certiorari at page 2.

JURISDICTION

A statement particularly disclosing the basis upon which it is contended that this Court has jurisdiction is set out in the petition for the Writ of Certiorari at pages 2, 3.

STATEMENT OF THE CASE

A full statement of the case having been given in the petition for Certiorari for brevity is not here repeated.

SPECIFICATION OF ERRORS

The Circuit Court of Appeals erred in each of the following particulars:

1. In holding that the pay arrangement allegedly entered into October 18, 1938, between respondent and its employees, conformed to the legal requirements of Section 7 of the Fair Labor Standards Act of 1938.

2. In holding that the decision of this Court in the case of Walling v. Belo Corp., 316 U. S. 624, was controlling in the instant case.

ARGUMENT

A.

In support of the first question presented petitioner respectfully points out that:

This Court in the case of Overnight Motor Transportation Co., v. Missel, 316 U. S. 572, has clearly established that the Fair Labor Standards Act of 1938, was intended, not only to raise sub-standard wages, but to discourage excessive hours of employment through the establishment of penalty rates for overtime, that is to say, under section 7 of the Act, an employer desiring to work his employees longer than the maximum hours established therein must compensate them at time and one-half for such overtime hours upon their regular rate of pay rather than the legal minimum rate as established by section 6 of said Act. As was pointed out in this decision no difficulty is encountered by courts or litigants in determining regular rate of pay when the employee receives, a straight hourly wage, a fixed weekly salary for a fixed number of hours of work, or a fixed salary for a fluctuating work-week, for in these instances all that it is necessary to do is to divide the number of hours worked into the salary paid.

The simplicity in determining the regular rate of pay in the instant case, is quite as easy if any reference is made to the transcript, for the purpose of scrutinizing the facts surrounding the alleged pay arrangement which respondent employed in keeping its time books. It will readily be observed in this case that respondent's weekly time book (Exhibit No. 1, of Stipulation No. 1) reflects the establishment of a purported new basic rate of 34 cents an hour, in most instances, with time and one-half for overtime hours, computed at 51 cents (R. 16) and since this arrangement would not equal the employees old rate of pay at 40 cents an hour as established by oral contract and wage payments, the respondent guaranteed its employees a "bonus" or "gratuity" (R. 33) in all instances where they worked less than 62 hours each week. This "bonus" or "gratuity" ranged from an approximate minimum of .09 cents in the case of 61 hours work (40 hrs. x .34 = $13.60, 21 hrs. x .51 = $10.71 + .09 = $24.40) to a maximum of $2.40 in the case of 40 hours (40 hrs. x .34 = $13.60 + $2.40 = $16.00) and upon employing the "bonus" or "gratuity" in every instance to and including 61 hours of labor the employee received for his week's pay the sum of his hours worked multiplied by his old rate of pay, which in most instances was 40 cents an hour. In other words, this so-called "bonus" placed a higher premium on the fact that the employee worked less hours, so that in truth the "bonus" was no more than an equalizing factor to bring the employee up to the former established rate of pay.

From a cursory examination of the record, relying upon the bona fides of the alleged contract or any other theory which the facts might support, it can readily be seen, that although on its face the pay roll record purports to disclose a different state of facts, it amounts to nothing more

or less than a guarantee on the part of respondent to the employees of 40 cents an hour, and with the regular rate of pay thus established it necessarily follows that the employees effected by the reversal in the decision of the Circuit Court of Appeals, have not been compensated at one and one-half times their regular rate of pay in compliance with section 7 of the Act.

This bonus plan and the intent accompanying its adoption by the respondent, brings this case clearly within the factual situation of Carleton Screw Products Company vs. Fleming, 126 F. (2d) 537, decided on March 20, 1942. In that case it was the desire of the officers of the Carleton Company to reduce the rate of each employee's pay before the effective date of the Act and still maintain their old rate of pay. The means which were there employed are in substance the same as in the instant case. The court in disposing of the Carleton case said, "it is necessary to determine what was the regular rate of compensation. The trial court found that regular rate was the agreed rate, plus the so-called bonus or gratuity paid at the end of each week. The purpose of this so-called bonus or gratuity was to maintain the wage rate at the same level as existed at and prior to September 1, 1938. The entire purpose of the plan was to escape paying overtime on the basis of that rate. The bonus has none of the earmarks of a bonus, but it was in fact a part of the employees' compensation" and proceed to affirm the granting of injunction under section 16 (a) of the Act.

Following this same line of reasoning Judge Wilson, of the United States District Court for the Northern District of Texas, in the case of McLendon et al., vs. Bewley Mills, decided December 10, 1940, in an oral opinion reported in 1 W. & H. Cases 934, stated in part: "I am of the view that the agents of the Government were correct in their construction, and that the plan, as mapped and outlined by the

defendant to its employees, as to the rate of pay, system of pay, etc., was not in compliance with the law. That it merely had the appearance of being so in certain particulars but in its aggregate substance was not. Without elaborating, that conclusion appears to me to be obviously correct because the time and a half for overtime paid under that twenty-five cent minimum pay would not be on the basis of the actual per hour wages of those men under that same arrangement. But, on a fictional basis, you might say of a minimum of twenty-five cents per hour.

"The additional compensation above the twenty-five cents per hour, which defendant provided, would make the compensation of these men approximately what it was before. In figuring whether it was in compliance with this law you must take the aggregate of that compensation, the minimum of twenty-five cents an hour, with such additional compensation and figure the per hour wage on that basis.

So, in the instant case respondent meant to and did create with its employees at the employee meeting a factual situation very identical with that existing in the Carleton and Bewley Mills cases. This was accomplished when Jenkins advised them that they would continue to receive 40 cents an hour (R. 18, 21, 23, 24) for all hours less than a full week's work. This fact cannot be changed merely because respondent saw fit to revise its bookkeeping system to show a formal fictitious compliance with the Act. In this connection it should be remembered that this respondent subsequently engaged other employees and advised them that their rate of pay would be 40 cents an hour (R. 25) although Exhibit No. 1, of Stipulation No. 1, shows that their wages were computed in the very same manner as those employees engaged prior to the effective date of the Act. It is equally clear that respondent recognized that its purported scheme did not constitute a bona fide change in the rates. It was

frankly admitted by respondent's witnesses that its proposal "was a matter of bookkeeping" (R. 32) that the figures of 34 cents and 51 cents were reached by "simple arithmetic" (R. 39) and that the "bonus" granted to bring the earnings at the new rate up to earnings at the former rate "was a misnomer" (R. 33) since it was not in any respect related to the amount or type of work performed, or any of the other common elements which generally influence changes in rates of pay (R. 38).

The mere fact that the guaranteed rate of 40 cents an hour in this case is greater than the minimum established by section 6 of the Act, is of no avail to this respondent for it is now well established that the "Act requires payment for overtime at time and a half the regular pay where that pay is above the statutory minimum as well as where it is at the minimum." Overnight Motor Transportation Co. v. Missel, 316 U. S. 572; See Also—Bumpus v. Continental Baking Co., (C. C. A. 6) 124 F. (2d) 549; Warren-Bradshaw v. Hall, 63 Sup. Ct. 125; Floyd v. DuBois Soap Co., 63 Sup. Ct. 159; Mid-Continent Pipe Line Co. v. Hargrave, (C. C. A. 10) 129 F. (2d) 655.

B.

In support of the second question presented, petitioner would show that:

No criticism is made of the decision in the case of Walling v. Belo Corp., 316 U. S. 624, but contention is made that the principles therein enunciated are not and cannot be controlling in the instant case as is stated by the decision of the Circuit Court of Appeals. In the case at bar the employees were not guaranteed a stated specific wage each week, but only received a sum equal to the hours worked multiplied by 40 cents an hour in all instances below 62 hours as has been hereinbefore pointed out. By respondents plan, which

the District Court held wasn't submitted in good faith, the employee Mack Cook, a typical employee, received $6.00 for 15 hours labor, $8.40 for 21 hours labor, $12.00 for 30 hours labor, $18.00 for 40 hours labor, etc., and it was only when he worked longer than the 62 hours required under respondent's revised plan of bookkeeping that the 51 cents an hour overtime rate reflected any change in the total amount of his weekly pay as is shown by the pay-roll computation for the week of November 4, 1938, (R. 16). In the Belo case the typical employee was, under and pursuant to the written terms of a bona fide contract, guaranteed a stated sum of $40.00 each week irrespective of the number of hours he might work in any work week up to and including a fixed maximum number of hours. In addition to this liberal policy of payment to assure the employee enough money to pay his bills at the end of each week, the Belo corporation went much further, as it is so aptly set forth in the decision of that case, by granting its employees two weeks vacation each year at full pay, special bonuses, full pay during periods of illness (sometimes for months), absences to attend to personal affairs, life insurance, and other benefits which inured to their general well being.

These factors do not appear in the instant case as there was no guaranteed weekly wage payment, nor were there any employee benefits accruing in addition to the wage payments.

By the proposed plan herein respondent's employees were to be guaranteed an hourly rate of pay, but yielding the same weekly compensation for the same number of hours worked by use of the payment of the so-called "bonus" or "gratuity," (R. 16). The evidence of the employees at the trial reveals that they did not understand the nature or the terms of this pay arrangement (R. 19, 22, 23) and the trial court found this in its findings of fact. This is further evi-

denced by the fact that the employees received their old rate of pay in their pay envelope without any showing as to the manner in which same was computed (R. 19), and the fur- their fact that new employees were hired by the respondent at the 40 cents an hour rate although the company pay-roll record revealed the use of the lower rate of pay, together with the "bonus" or "gratuity" in recording upon its payroll the total compensation paid to such new employees. A still further fact lending to the confusion in the mind of the employees was that they were instructed to tell inquirants that they were paid 40 cents an hour with time and one-half overtime (R. 18, 23, 24). It is clear from the record in this case that there was no express understanding with the employees as to a new rate of pay, nor was there any weekly guarantee as to total weekly earnings except that if the employee worked the full workweek of 60 hours, which was not necessarily the rule, he received the same amount that he formerly received, but if he worked fewer hours he was paid the old rate of 40 cents an hour. Certainly, seasonal fluctuations in the hours of employment would lend nothing but confusion to the mind of the employee as to the rate of pay in the light of these facts. Surely, the acceptance by the employees of pay under the alleged new pay arrangement could not lend the virtues of an express contract where there was no mutual understanding as to its terms.

> See Warren-Bradshaw Drilling Co. v. Hall et al., 63 Sup. Ct. 125; Burgess v. Phillips Petroleum Co. (June 14, 1942, Kans. D. C. Russell Co.), 5 W. H. R. 606.

It is therefore respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers, by granting a writ of Certiorari and there-

after reviewing and reversing that portion of the decision complained of herein.

FRANCIS E. THOMASON,
Attorney for Petitioner.

APPENDIX

Finding and Declaration of Policy

Sec. 2. (a) The Congress hereby finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well being of workers (1) causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce.

(b) It is hereby declared to be the policy of this Act, through the exercise by Congress of its power to regulate commerce among the several States, to correct and as rapidly as practicable to eliminate the conditions above referred to in such industries without substantially curtailing employment or earning power.

Maximum Hours

Sec. 7. (a) No employer shall, except as otherwise provided in this section, employ any of his employees

who is engaged in commerce or in the production of goods for commerce—

(1) for a workweek longer than forty-four hours during the first year from the effective date of this section,

(2) for a workweek longer than forty-two hours during the second year from such date, or

(3) for a workweek longer than forty hours after the expiration of the second year from such date, unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

(d) This section shall take effect upon the expiration of one hundred and twenty days from the date of enactment of this Act.

Penalties

Sec. 16. (b) Any employer who violates the provisions of section 6 or section 7 of this Act shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action for and in behalf of all employees similarly situated. The count in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action.

Relation to Other Laws

SEC. 18. No provision of this Act or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this Act or a maximum workweek lower than the maximum workweek established under this Act, and no provision of this Act relating to the employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under this Act. No provision of this Act shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage under this Act, or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under this Act.

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No. 719

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, A. D. 1942

WILLIAM L. MURRAY, as Agent for and on Behalf of JAMES REDDICK, and Others Similarly Situated,
Petitioner,

vs.

NOBLESVILLE MILLING COMPANY, a Corporation,
Respondent.

BRIEF OF RESPONDENT OPPOSING PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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The previous opinions in this case are reported as follows:

Murray v. Noblesville Milling Co., 42 Fed. Supp. 808;
Murray v. Noblesville Milling Co., 131 Fed. (2d) 470.

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THE FACTS

This is a suit by former employees of the Noblesville Milling Company now in liquidation against the Noblesville Milling Company seeking to recover additional wages with liquidated damages and attorneys' fees under the Fair Labor Standards Act. The employees received more than the minimum required by the act and the sole question is whether they can recover something additional on the ground there was not a proper apportionment of the

wages paid as between straight time and overtime. The employer was out of business before suit was brought and no longer in competition with others, so there is nothing involved as to the future or as to competitive conditions or the public in general. The sole question is—Can 22 plaintiffs recover something in addition to the pay which was accepted as satisfactory during a period of about two and a half years during which the services were rendered? The respondent prior to October 18, 1938, had for many years been operating a mill at Noblesville, Indiana, for making flour and handling wheat and other grains. Its employees were paid at a straight hourly rate which was 40 cents an hour or higher and generally worked about 60 hours a week. On October 18, 1938, the employer called a meeting of the employees to consider what should be done to make their system comply with the Fair Labor Standards Act to become effective in a few days. The employer did not wish to reduce wages and was not in a position to grant an increase. (Transcript 32.) The employees were not interested in reducing hours, but were much interested in not having the amount of money in their weekly pay envelope decrease. The amount they were receiving was sufficient to satisfy the law and it was a question of finding a way to calculate the wages and keep the books that would satisfy legal requirements. The employer proposed that the matter be handled by establishing a base rate of pay of 34 cents an hour with overtime starting after 40 hours at 51 cents an hour. In weeks of such length as to make this schedule yield less than the men received under their existing straight-time rates, the employer in order to keep the act from reducing pay, agreed to add a bonus of enough to bring the total amount paid up to what would have been received under the old rate. The maximum bonus would be $2.40 a week

for a 40-hour week, and as the hours increased, the bonus decreased. At 61 hours it was nine cents and in weeks that exceed 61 hours the man received 34 cents for 40 hours and time and a half for overtime at 51 cents an hour with no bonus, which resulted in an increase in pay for such weeks. (Transcript p. 16.) The 40-hour week was adopted at once to make subsequent revision of the plan unnecessary. Employees receiving over 40 cents an hour before October 18, 1938, received a higher schedule under the new rates proportionate to the existing higher rate. The employer had a blackboard and put figures on it giving illustrations of the way the new rates would be applied. Each employee who testified at the trial that he did not know how to figure his pay under the new rates also testified he understood his base rate was 34 cents and overtime rate 51 cents with a bonus where necessary to prevent a wage reduction. (Transcript 18, 21, 22, 23, 24.) This proposition was accepted by the men and wages paid under it and accepted without objection for the period of about two years and a half until operations ceased. (Transcript p. 44.)

The trial court in its findings of fact No. 7 (Transcript p. 50) found that the employer proposed to its employees the pay schedule above outlined and put it into effect and revised its bookkeeping to reflect it. The statement on page 51 in finding 9, that it was not a bona fide contract is a conclusion not supported by anything in the evidence and contrary to finding 4 on page 48, establishing that the men were paid under the new arrangement, and the contract performed in every particular. This was good faith.

The case in the trial court and Circuit Court of Appeals involved some additional questions as to employees Reddick and Passwater not presented in this Court, and they

are therefore not discussed. The Circuit Court of Appeals did not undertake to decide any question as to the construction of the Fair Labor Standards Act, but merely decided that the facts in this case were covered by the decision of this Court in Walling v. Belo Corporation, 316 U. S. 624, and undertook to follow that decision. The wage arrangement was approved and the decision as to this was correct, and not a matter of general interest.

REASONS FOR NOT GRANTING THE WRIT

1. Each week under the case of Overnight Motor Co. v. Missel, 316 U. S. 572, is a separate unit. It, therefore, follows that weeks under 40 hours are not involved because in such weeks there was no overtime. Weeks over 61 hours are not involved because in such weeks the pay was 34 cents base rate and 51 cents overtime rate with no bonus involved. As to weeks between 40 hours and 60 hours the bonus was in effect an additional overtime payment which is legal. In this case there was a definite agreement that the base hourly rate was 34 cents and that agreement was binding. No question is involved here of converting a weekly rate to an hourly rate. The hourly rate was fixed by a binding agreement and the correct wages paid.

Cases cited by petitioner under Proposition One which undertake to convert a weekly rate to an hourly rate are not applicable to this case. The case of Walling v. Belo Corporation, 316 U. S. 624, is controlling in this case and was correctly applied to the facts. Petitioner on page 16 of his brief says no criticism is made of the Belo decision.

2. The second reason of the petitioner is not valid because the case of Carleton Screw Products Co. v. Flem-

ing, 126 Fed. (2d) 537, is not in conflict with this decision because this case only decides that the facts in this case are within the rule laid down in Walling v. Belo Corporation, 316 U. S. 624, and the Carleton Screw Products case decides nothing on that subject. It proceeds on the theory that the Belo case was wrongly decided in the Circuit Court of Appeals and refuses to follow it. When the Belo case was later affirmed by this Court, any conflicting views in the Carleton Screw Products case were in effect disapproved and when the Circuit Court in our case held that the Belo case was controlling, this in no way conflicted with anything decided in the Carleton Screw Products case. The decision in the Carleton Screw Products case is in conflict with the Supreme Court of the United States, but that is not a reason for certiorari in this case.

3. The third reason assigned by the petitioner is invalid because this Court by its rules already announced in the cases decided by it has provided sufficient rules for the administration of the Fair Labor Standards Act so far as questions here involved are concerned. This case is correctly decided under rules declared by this Court and there is no good to be accomplished by reviewing it. There is nothing in the record to show that any other employers or employees are interested in the questions presented.

Summary of Argument.

1. The issues in this case already have been adequately discussed and decided in the case of Walling v. A. H. Belo Corporation, 316 U. S. 624.

2. There is no conflict in the different Circuits.

3. The case has no general interest or importance.

ARGUMENT

The general rule has been many times announced that the jurisdiction to review judgments of the Circuit Court of Appeals by certiorari is to be exercised sparingly and only in cases of gravity and general importance and in order to secure uniformity of decisions.

Fields v. U. S., 205 U. S. 292, 51 L. Ed. 807, 27 S. C. R. 543;

Forsyth v. Hammond, 166 U. S. 506, 41 L. Ed. 1095, 17 S. C. R. 665.

None of these reasons applies to the case presented by this petition. The petition is very vague as to the reason for which certiorari is requested and merely refers to the general statute under which the writ may issue and does not confine itself to any particular reason that might apply to this case. In view of this lack of definiteness, it is not possible to make our response as clear cut and brief as we would like. We think, however, that it is clear that the decision of the Circuit Court of Appeals is correct and that it does not involve a matter of any general interest or importance and that no review is necessary in order to secure uniformity among the Circuit Courts of Appeal.

In the case of Overnight Motor Transportation Co. v. Wm. H. Missel, 316 U. S. 572, 86 L. Ed. 1682, 62 S. C. R. 1216, the principle is established that under the Fair Labor Standards Act the unit is the week. The Court expressed this proposition in the following language on page 579:

> "It is likewise abundantly clear from the words of Section 7 that the unit of time under that section

within which to distinguish regular time from overtime is the week."

Accepting the week as the unit in this case, it is clear that weeks of less than 40 hours are not involved for the reason that in such weeks there was no overtime. It is equally clear that weeks of over 61 hours are not involved for the reason that as to such weeks, there was simply a straight contract to pay 34 cents an hour for a base rate and 51 cents an hour for overtime. The pay was so handled in such weeks and the contract carried out and men working over 61 hours simply received their base rate for 40 hours and time and a half for time over that. As to such weeks, there does not seem to be any room for argument that there was anything wrong with the arrangement. General Mills v. Williams, 132 Fed. (2d) 367.

The weeks remaining for consideration are the weeks between 40 hours and 61 hours. As to these weeks, there was a clear agreement with the men that the base rate should be 34 cents an hour. The men were paid 34 cents an hour for the base hours and in addition were paid more than time and a half for the remaining hours and each week were paid more than the minimum required by the statute.

The situation is entirely covered by the principles which were announced in the case of Walling v. A. H. Belo Corp., 316 U. S. 624, which decision petitioner on page 16 of his brief accepts as correct.

In that case, just as in this, the employer sought to find a way to comply with the law without reducing anybody's pay. The employer wrote the employees a letter (page 628) outlining the new proposition in the following terms:

> "In order to conform our employment arrangements to the scheme of the Act without reducing the amount of money which you receive each week, we advise that from and after October 24, 1938, your basic rate of pay will be 67 cents per hour for the first forty-four hours each week and that for time over forty-four hours each week you will receive for each hour of work not less than one and one half times such basic rate above mentioned, with a guaranty on our part that you shall receive weekly for regular time and for such overtime as the necessities of the business may demand, a sum not less than $40."

It was contended that such an arrangement was improper, but this Court approved it and used the following language on page 630:

> "It is no doubt true, as petitioner contends, that the purpose of respondent's arrangement with its employees was to permit as far as possible the payments of the same total weekly wage after the act as before. But nothing in the act bars an employer from contracting with his employees to pay the same wages that they received previously so long as the new rate equals or exceeds the minimum required by the act."

* * *

Continuing on page 631, the Court said:

> "In its initial stage the question to which this dispute gives rise is a question of law, a question of interpretation of the statutory term, 'regular rate.' But it is agreed that as a matter of law employer and employee may establish the 'regular rate' by contract."

* * *

> "The difficulty arises from the inclusion of the $40 guaranty. The problem is whether the intention of

the parties to set 67c an hour as the regular rate squares with their intention to guarantee a weekly income of $40.

"The administrator's position is that these two objectives are inherently inconsistent and that the intention to fix the regular rate at 67c is overridden by the intention to guarantee the $40 per week.

"We cannot agree.

"In the first place, when an employee works more than fifty-four and one-half hours in a single week he is admittedly entitled to more than $40 guarantee. The record shows that in such a case the employee is paid at the rate of $1 an hour (150 per cent x $.67) for each hour of overtime. In this situation, then, it is clearly guaranty that becomes inoperative and the 67c hourly rate fixed by the contract is controlling.

"In the second place, although it is perfectly true that when the employee works less than fifty-four and one-half hours during the week his pay is determined by the $40 guaranty, it does not dispose of the problem simply to say this.

"The question remains whether the $40 contemplates compensation for overtime as well as basic pay. The contract says that the employee is to receive 67c an hour for the first forty-four hours and 'not less than one and one-half time such basic rate' for each hour over forty-four.

"Consequently, if an employee works fifty hours in a given week it might reasonably be said that his $40 wage consists of $29.48 for the first forty-four hours (44 x $.67) plus $10.52 for the remaining six hours (6 x $1.753). To be sure $1.753 is more than 150 per cent of $.67, but the act does not prohibit paying more; it requires only that the overtime rate be 'not less than' 150 per cent of the basic rate. It is also true that under this formula the overtime rate per

hour may vary from week to week. But nothing in the act forbids such fluctuation."

* * *

Continuing on page 634, the Court said:

"But the guaranty contract in this case carries out the intention of the Congress. It specifies a basic hourly rate of pay and not less than time and a half that rate for every hour of overtime work beyond the maximum hours fixed by the act.

* * *

"The problem presented by this case is difficult—difficult because we are asked to provide a rigid definition of 'regular rate' when Congress has failed to provide one. Presumably Congress refrained from attempting such a definition because the employment rationships to which the act would apply were so various and unpredictable. And that which it was unwise for Congress to do, this court should not do. When employer and employees have agreed upon an arrangement which has proven mutually satisfactory, we should not upset it and approve an inflexible and artificial interpretation of the act which finds no support in its text and which as a practical matter eliminates the possibility of steady income to employees with irregular hours. When the question is as close as this one, it is well to follow the congressional lead and to afford the fullest possible scope to agreements among the individuals who are actually affected. This policy is based upon a common sense recognition of the special problems confronting employer and employee in business where the work hours fluctuate from week to week and from day to day."

The principle that the employers and employees were to be left free to work out the details of their pay arrangement in a way that was appropriate to the business involved is a principle that applies fully to this situa-

tion. The employer and employee did undertake to establish a base rate which was agreed upon, and to provide pay for time after 40 hours that would be at least equal to time and a half for the remaining hours. The employees in fact had their pay figured on this basis and in fact received a base rate of 34 cents for 40 hours and received in addition an amount that was not less than 150% of the base rate for each additional hour worked. Such an arrangement complied with the statute.

The petitioner has made reference to a number of cases in which it was held that something more was due. None of the cases relied upon by the petitioner, however, are cases in which there was a definite agreement as to what the base hourly rate should be. They are all cases in which there was no agreement for an hourly rate but was an agreement for a weekly rate and the Court has undertaken to lay down rules of law for finding the hourly rate where no hourly rate was agreed upon. Such cases have no application to our situation.

The petitioner has endeavored to make some question as to whether there was a new wage schedule worked out as a result of the meeting of October 18, 1938. However, there is nothing of substance to that contention. The employees who testified as to what the new proposition was all agreed that they understood that the base rate was to be 34 cents and the overtime rate 51 cents. The employer's witnesses testified to the same thing, and further testified that the new rate was uniformly applied and the trial court in its finding No. 7 said:

> "Thereafter defendant put the foregoing plan into effect and revised its bookkeeping system to reflect it." (Transcript, page 50.)

Some of the employees testified that after the new arrangement was made they did not know how to figure their pay and never had attempted to figure it. However, they all admitted understanding the essential features of the new schedule, and since they continued to work for over two years thereafter without raising any question, they accepted the new schedule.

In the case of Williams v. Jacksonville Terminal, 315 U. S. 386, a question was raised as to whether red caps had agreed to a new contract with reference to the way their tips were to be handled. The employer had notified them as to what the new arrangement was. On page 398 the Court said:

> "By continuing to work, a new contract was created. This result follows because the employer, after notice, may keep all earnings arising from the business. * * * If the red cap did not accept the terms offered he would be a volunteer and not an employee. As a volunteer he could probably keep his tips, but would not be entitled to a contractual wage."

The same thought was expressed in the 7th Circuit in the case of Shuppan v. Peoria Ry. Terminal, 30 Fed. (2d) 569. In that case the employer had submitted a proposition as to future terms of employment which the employees never formally accepted but they continued to work. The Court said:

> "The Company, having made it clear what wages it would pay to its employees, those who took employment with it thereafter, or those who continued in its employment, though mistaken as to the power of the company to fix wages must be deemed thereby to have accepted the only terms upon which such continued employment was offered."

This principle applies fully to the facts in this case. After October 18, 1938, the employer never offered any terms of employment except those outlined at the meeting on that date, and if the men were employees at all, after that date, they were employees upon the terms offered.

Petitioner has also claimed that this Court should take over this case on account of the decision in the case of Carleton Screw Products Co. v. Fleming, 126 Fed. (2d) 537, which petitioner thinks is in conflict with this decision.

There is no real conflict in these two decisions. The case involved in this petition decides nothing substantial except that the contract of employment which was involved in this case was within the rules laid down in the Belo case. The Circuit Court of Appeals in our case did not in any way undertake to construe the Wage-Hour Law —they merely decided that the construction given to that law by the Supreme Court of the United States covered the facts in the case before them. The Carleton Screw Products case does not in any way touch on that question. The Carleton Screw Products case was decided before the decision of either the Missel case or the Belo case. Any conflict that may exist with the Carleton Screw Products case is a conflict between the Belo case and the Carleton Screw Products case. It is not a disagreement between circuits, but it is a disagreement between the Circuit Court deciding the Carleton Screw Products case and the Supreme Court of the United States, and such conflict is not a reason for granting a certiorari in our case. Our case has merely followed the rules declared by the Supreme Court of the United States.

The Carleton Screw Products case was cited to this

Court as an authority in the Belo case and was not followed. The reasoning upon which that case proceeds was expressly repudiated in the Belo case. The Carleton Screw Products case on page 540 uses the following language:

> "Defendant's contention finds some support in the case of Fleming v. A. H. Belo Corp., 121 Fed. (2d) 207. * * * We are not persuaded that this decision correctly construes the provision of the statute, and we think it not sustained by the weight of authority."

Thereafter the decision in the Belo case was affirmed by this Court. Such action amounted to a disapproval of the Carleton Screw Products case. The effect of the Carleton Screw Products case was that it was not open to the employer and employee to agree upon a base rate coupled with a provision that the employee was to receive compensation beyond what the employer would receive on the basis of the agreed rate plus time and a half for overtime. The Belo case repudiated this idea and points out that additional money paid under the name of a guaranty can be ignored. Nothing should turn on the question of whether the additional money was paid under the name of guaranty or under the name of bonus. In the Belo case, just as in our case, after a certain number of hours had been worked, the guaranty or bonus disappeared and pay was figured on a straight basis of time and a half for overtime with nothing added. If the Carleton Screw Products case, as we think is the fact, is already in effect overruled, there would be no occasion for taking over this case simply for the purpose of overruling it again. An overruled case does not make a conflict such as is contemplated by the rules of this Court in passing on a petition for certiorari. It is further to be noted

that the difference between what would have been paid under the rule announced in the Carleton Screw Products case and what was in fact paid is so trifling that the matter hardly deserves the attention of the Supreme Court of the United States. The rule in the Carleton Screw Products case only requires that the amount of the bonus is to be added to the amount paid for base hours, and thus a new base rate calculated. If this change should be made in our case, it would involve a lot of figuring to find out just how much change it would make, but it is obvious that the change that would be made would be insignificant. For instance, in a week of 41 hours, under the way the pay was actually figured, there would be a payment of $13.60 for 40 hours straight time at 34 cents, plus 51 cents for one hour overtime, plus $2.39 bonus, making the total amount actually paid $16.40. If this were refigured on the Carleton Screw Products case basis, there would be added to the base rate per hour 1/40 of this $2.39 bonus, which would be .06 cents, making the base rate 40 cents instead of 34 cents. This would mean that the man would be paid $16.00 plus 60 cents overtime, making a total payment of $16.60 or for the week 20 cents more than was actually paid. If instead of taking a 41-hour week, we take a 50-hour week, the result is that under the method followed of paying the men he received 40 hours at 34 cents or $13.60, plus 10 hours overtime at 51 cents, making $5.10, plus $1.30 bonus, making the total paid $20.00. If this pay was refigured under the Carleton Screw Products plan, there would be added to the base rate 1/40 of $1.30, increasing the base rate 3 cents to 37 cents and the overtime rate to 56 cents. Under this setup, the man would receive for his base time $14.80, plus $5.60, making a total of $20.40, or only 40 cents more than he was in fact paid. The increases for other weeks would

be for 45 hours $.25; for 48 hours $.24; for 54 hours $.28; for 58 hours $.16; for 60 hours and above, nothing. The average increase would apparently be somewhere under 30 cents a week and less still for the first two years when required overtime began after 44 and 42 hours. In 52 weeks this would amount to under $15.60 as a maximum. It was in fact substantially less than that because none of the men had overtime every week and they had many weeks in which they put in over 61 hours, so that no bonus was involved. If we estimate that there were 20 weeks a year in which there would be a correction, the difference to each man per year would be less than $6.00, and for his 2½ years would be under $15.00. With 22 men involved, the total amount involved in this contention of the petitioner would be under $330.00, which would not pay the expenses of the litigation for either party, and a controversy that involves no more than this can properly be left to be determined by the Circuit Court of Appeals.

As was before pointed out, this company is out of business and the decision can have no effect on future wages paid by this company or on competitive conditions and probably no other company has made precisely the same arrangement with its employees. If this Court should take over the case, we feel the chances are that the Court would continue to repudiate the Carleton Screw Products decision and that no change would be made in the result reached by the Circuit Court of Appeals. If the Carleton Screw Products decision should be adopted and accepted, it might increase the award to the plaintiffs not over $300.00. We would not think such litigation of sufficient importance to take up the time of this Court.

Petitioner's third reason for the writ is that this case presents an opportunity for the Court to announce fur-

ther rules for the application of the Fair Labor Standards Act. The Court in the Belo decision and in the Missel decision and the red cap decision and numerous other decisions has already established the applicable fundamental principles and we feel that this Court can safely leave it to the Circuit Court of Appeals to apply those principles. Of course, there will continue to be slightly different contracts of employment involved in these cases, and the Belo decision contemplates that some variation is legal, and it does not seem to us that it is worth while for this Court to spend its time on an employment agreement made by a small company that is out of business.

The only reason the District Court arrived at such large figures in its judgment was that the District Court did not follow the Carleton Screw Products rule, but figured all overtime at 60 cents. A very substantial portion of the money awarded was due to applying the 60-cent rate to weeks of over 61 hours, and to weeks between 40 and 60 hours where no such rate can be justified, under both the Missel case and the Belo case. The Carleton Screw Products rule would not give anything like the increased amount found by the District Court. Also $1,493.80 of the amount awarded by the District Court is due to the findings in favor of Reddick and Passwater, which were approved by the Circuit Court of Appeals and are not challenged in this Court.

So far as we can see, this case possesses no general interest such as this Court customarily requires in cases where a writ of certiorari is to issue.

CONCLUSION

The respondent, therefore, contends that no writ should be issued in this case, first, for the reason that the case is correctly decided; second, for the reason that any principles of law that are involved have already been sufficiently announced in the Belo case; third, for the reason that the present contentions of the petitioner, if accepted, involve a rather insignificant amount of money that would not justify the Court in devoting its time to the controversy, and fourth, the case is also one possessing no appreciable general interest to the public, and involving no conflict in Circuit Court of Appeals decisions. The petition, therefore, should be denied.

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